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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)**

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THE PEOPLE,

Plaintiff and Respondent,

v.

BINA MARIE PHILLIPS,

Defendant and Appellant.

C043905

(Super. Ct. No. 02F01034)

An information charged defendant Bina Marie Phillips with two counts of perjury (Pen. Code, § 118, subd. (a) -- counts one and two); two counts of filing false documents with a public office (Pen. Code, § 115, subd. (a) -- counts three and four); and possession of less than 28.5 grams of marijuana, a misdemeanor (Health & Saf. Code, § 11357, subd. (b) -- count five). The allegedly false documents were a marriage license application, a certificate of confidential marriage, and an affidavit of physical inability to appear.

After the prosecution presented its case to a jury, defendant's motion for acquittal on counts one through four (Pen. Code, § 1118.1) was denied. After defendant testified on direct but prior to cross-examination, defendant entered a plea of guilty to counts one, four and five with a full and complete disclosure of her involvement and agreed to testify against her accomplices in exchange for no state prison at the outset and the prosecution's agreement not to charge her with additional offenses based on her disclosure of her involvement.

With new counsel, defendant moved to withdraw her plea on the grounds of ineffective assistance of counsel and defendant's mental instability at the time of her plea. After defendant testified in support of her claims, the trial court denied her motion.

The court granted probation for a term of five years subject to certain terms and conditions including 270 days in county jail and a \$400 restitution fine. (Pen. Code, § 1202.4.)

Defendant appealed. She obtained a certificate of probable cause (Pen. Code, § 1237.5).

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant filed a lengthy supplemental brief in which defendant complains, for the most part, about the trial truncated by her plea. Even with a certificate of probable cause, her complaints about the trial are waived because she entered a guilty plea. (See *People v. Turner* (1985) 171 Cal.App.3d 116, 124-128 (*Turner*).) Her other complaint about her plea, which is cognizable, lacks merit. We shall affirm the judgment.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

We recount the factual basis set forth at the entry of plea hearing. (*People v. Holmes* (2004) 32 Cal.4th 432.) The same judge who presided over the jury trial took defendant's plea. The 38-year-old defendant explained that Roosevelt Kemp, defendant's boyfriend, approached defendant with a marriage certificate and explained that in order for defendant to become the 73-year-old victim's beneficiary, defendant would be marrying the victim who wanted a confidential marriage, and that defendant was not to discuss it with the victim. Defendant accompanied Roosevelt Kemp and Reverend Norris Kemp, Roosevelt's brother, to an office building in order "handle some business there." She signed in as Roosevelt Kemp requested. When they sat down at a desk, Norris Kemp said, "'I don't think Bina knows entirely what's going on here, I cannot proceed if she does not know what's going on here.'" Defendant claimed Roosevelt Kemp responded, "'I talked to her about it, she's fine.'" When defendant was handed some documents to sign in the recorder's

office, Roosevelt Kemp leaned over her and pointed out where she was to sign, during which the clerk had a conversation with Norris Kemp. Roosevelt looked over the paperwork and handed the documents to the clerk. They then paid at the cashier. Defendant did not see Norris Kemp sign the marriage license. Defendant stated that the victim never indicated any consent to a marriage relationship with her. Defendant stated that Roosevelt showed her a yellow piece of paper with the victim's purported signature reflecting an agreement between defendant and the victim.

The trial court inquired as to testimony and certain documents submitted during the course of trial. Defendant admitted that her signature appeared on a license and certificate of confidential marriage document and that the purported signature of the victim was not his. She also knew that the victim had not signed the affidavit of physical inability to appear and that the reasons stated on the document for the victim's inability to appear were untrue. Defendant stated that both documents as well as an original of the affidavit were prepared by Roosevelt Kemp, that Kemp brought the documents to defendant to sign while she was staying at the victim's home, and that Kemp advised her that he wanted her to marry the victim in order to become the victim's beneficiary. Defendant claimed that Roosevelt Kemp filled out an application for marriage, gave it to her, she signed it but that the victim's signature on the document was not his. Defendant

admitted lying at trial about a document reflecting some property she claimed to have returned to the victim; the victim had not signed the document or made the statements in the document. Kemp had shown defendant other documents with the victim's signature, one an original. Defendant denied knowing who prepared the power of attorney document and claimed she had not seen it until trial. The weekend prior to November 5, 2001, defendant and Kemp spoke with one another at Kemp's home about submitting the false documents to the county recorder. Defendant admitted going to the recorder's office with Roosevelt Kemp and Norris Kemp.

At trial, defendant admitted that when she was arrested, she had 6.26 grams of marijuana in her purse but explained she was the caregiver for Roosevelt Kemp who had a prescription for medical marijuana.

## **DISCUSSION**

### **I**

In defendant's supplemental brief, she begins by claiming she received no extension of time to prepare her brief and had no effective legal representation to prepare a brief nor did she have any ability to do so herself. The appellate record reflects that defendant was appointed counsel to assist in her appeal and counsel filed a *Wende* brief. The record also reflects that defendant obtained a 30-day extension of time to file her supplemental brief.

On the next seven pages of her brief under the heading "Statements of Historical Facts," defendant fails to cite to the record for any statement. In the next three pages of her brief under the heading "Trial Arguments," defendant fails to cite to the record let alone cite decisional or statutory authority in support of her statements that the trial court committed misconduct and counsel rendered ineffective assistance. For the next page with the heading "Arguments," defendant fails to cite to the record for the statements concerning her entry of plea [claims she was under the influence of medication and confused as to the questions asked by the trial court]; the failure of her attorney to call a document examiner at trial although she paid to hire one; and the trial court's misconduct in chambers. In the next two pages under the heading "Questions," defendant fails to cite to the record and fails to cite any authority other than a reference to the constitutional guarantee to a speedy and public trial with no explanation or argument.<sup>1</sup>

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<sup>1</sup> Those questions include:

"1) Is 'Due Process' just a passing fancy to be twisted and manipulated to please an avarice D.A.? Are not we all responsible for the just conclusions of law?

"2) Was there collusion between the Judge, District Attorney, and unretained attorney, Mr. Joe Russell, who acted in concert and cunning verbal treachery to coerce, threaten, and commit fraud against me by withholding exculpatory evidence from being submitted?

"3) The fact there were no listed defense witnesses subpoenaed or notified by my attorney and suddenly Mr. Joe Russell appears and the trial is halted and frightens me into perjury and false admissions under the guise of a deal.

"Where a point is merely asserted by counsel without any argument of or authority for its proposition, it is deemed to be without foundation and requires no discussion." (*People v. Ham* (1970) 7 Cal.App.3d 768, 783, disapproved on another ground in *People v. Compton* (1971) 6 Cal.3d 55, 60, fn. 3; see *People v. Stanley* (1995) 10 Cal.4th 764, 793; see also Cal. Rules of Court, rule 14(a)(1)(B).) California Rules of Court, rule 14(a)(1)(C) requires that a brief must "support any reference to a matter in the record by a citation to the record." We treat defendant's failure to cite to the record and authority as a waiver of her complaints.

Citing to the record in the next six pages, defendant complains: (1) the trial court was biased and prejudiced to her

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"4) Violation of the California Constitution, Article 1, § 15, which guarantees a speedy and public trial.

"5) I was denied a Public Trial, in that most of the events went on, off the record, in secret, and out of view of the public and defendant.

"6) When the courts [*sic*] instructions and admonitions are violated by jurors, what equitable remedy is the defense entitled to?

"7) There is a shift of burden from the prosecution to defense when the court appears to support the prosecutions [*sic*] every position, sustain every prosecution objection, ask leading questions of the prosecutions [*sic*] witnesses, and cater to the whims of the prosecution.

"8) Should the court rely on factual evidence and not make judgments of witnesses based upon appearances or accusations and false representation until such time as all evidence has been submitted?

"9) Can an unretained attorney bind a defendant to a plea bargain that subverts constitutional rights?"

defense, removing her support person (Roosevelt Kemp) from the courtroom; (2) the trial court allowed rebuttal witnesses to remain in the courtroom; (3) the prosecutor misled the court about the victim's need for a wheelchair and oxygen tank; (4) the court was negligent in allowing the prosecutor to rely on improper authority for a support person for the victim; (5) the court erroneously ruled, interfered with questioning of witnesses, and erroneously admitted exhibits; (6) the trial court belittled defense counsel; (7) the trial court failed to replace a juror who had asked a question; (8) defense counsel erroneously claimed that he had contacted witnesses; and (9) the court was aware that defendant was on medication during her trial testimony and when she entered her plea.

"A person who pleads guilty to a criminal offense cannot thereafter raise issues relating to his guilt or to the procedures which would otherwise be required to establish his guilt. He may only raise issues which, if true, would preclude the state from prosecuting him despite his guilt." (*Turner, supra*, 171 Cal.App.3d at pp. 126-127.) Defendant's first eight claims and part of her last claim fall into the waiver category. Only defendant's complaint that the trial court was aware that she was on medication when she entered her plea, may be raised with a certificate of probable cause which she obtained. Defendant's only citation to the record is to her trial testimony. Defendant fails to cite to the record in support of her claim that she was on medication at the time of her plea.



Our review of the record reflects that she denied being under the influence of any alcohol or drugs when she entered her plea. Even assuming she was on medication when she entered her plea, there is no indication that such medication affected her ability to enter her plea.

Under the heading "Sentencing," defendant notes that she was granted probation but makes no contention related to the same. Under the heading "Motion to Withdraw Involuntary Coerced Guilty Plea," she claims she had to pay new counsel \$10,000 for the motion but raises no challenge to the denial of the motion.

## **II**

We note that at the entry of plea hearing, the trial court took under submission the dismissal of the remaining counts, that is, counts two and three. At sentencing, the court failed to order the remaining counts dismissed. Although there was no express agreement that the same would be dismissed in exchange for defendant's plea, the record may fairly be read to require dismissal of the remaining counts. The minute order and order of probation should be corrected to reflect dismissal of counts two and three.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

### **DISPOSITION**

The judgment (order of probation) is modified to indicate dismissal of counts two and three. As modified, the judgment is affirmed. The trial court is directed to modify the minute order and order of probation accordingly.

\_\_\_\_\_, BUTZ, J.

We concur:

\_\_\_\_\_, BLEASE, Acting P. J.

\_\_\_\_\_, DAVIS, J.